

United States District Court  
Eastern District of California

CM/ECF

Tentative Procedures

## **SUMMARY**

**In order to improve court record accessibility, reduce paper filings and the cost involved in traditional filing and service, the United States District Courts have been tasked with developing and implementing electronic filing, service and storage of documents (CM/ECF). On January 3, 2005, the Eastern District of California will become an electronic filing and service district. With limited, specified exceptions, CM/ECF participation is mandatory for those who litigate in federal court.**

**Our district is not the first to undergo this truly epic change in the way of processing, maintaining and accessing court records. The districts which have pioneered electronic filing have reported that CM/ECF has changed for the better internal court processing of documents, as well as litigant access to filing and information retrieval. Moreover, filing and service of court documents at the click of a mouse have the potential to save litigants time and money.**

**Any change, however, has the potential to cause initial disruption as old rules and practices possess the comfort of experience. This nutshell of CM/ECF procedures, along with planned intensive training efforts, is designed to ease the transition into the world of electronic court filings and to demonstrate that CM/ECF is nothing more than a slight extension of electronic document processing and transmission with which most are already very familiar. All one will need is computerized word processing, readily available software which will transform electronic documents into .pdf format, and high speed access to the internet. Having access to an efficient scanner is also highly recommended.**

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## **A. INTRODUCTION**

**1.0 Procedures in General.** The Clerk's Office for the United States District Court for the Eastern District of California has been engaged in CM/ECF research, development and implementation since August of 2002. During this process court personnel have visited multiple court sites and amassed a large volume of information regarding CM/ECF and its implementation in different courts. Based on this information the court has formulated these tentative procedures for the implementation of CM/ECF in the Eastern District of California.

**2.0 100% Electronic Filing.** With specified, limited exceptions, beginning Monday, January 3, 2005, electronic filing will be mandatory in all cases.

**3.0 Total versus Partial Implementation.** A survey conducted in 2003 of district courts which are live or going live on CM/ECF, showed that 19 of the courts either had transitioned to, or were planning, full CM/ECF capability. 13 of the courts stated they were planning on going to CM (internal case management) then phasing into full CM/ECF. Our tentative procedure of full CM/ECF is consistent with the majority decision of the courts which have found that piecemeal change is more difficult, disruptive and costly than full transition.

**4.0 Retention of Paper Files.** As discussed more fully herein, even full implementation of CM/ECF cannot dispose of all paper filings. A survey of 41 courts which have fully implemented CM/ECF engage in scanning to convert paper documents (usually pro se and prisoner) to electronic data base for inclusion in CM/ECF. 21 of those courts dispose of the paper documents after scanning. We propose to do likewise. Again, our tentative procedure to dispose of paper documents after scanning is consistent with the practice of the majority of courts. Keeping a hybrid paper/electronic system would engender confusion, and not realize the cost and efficiency benefits of purely electronic records management.

## **B. ADMINISTRATIVE PROVISIONS**

**1.0 Adoption of Procedures/Local Rules.** After a period of public outreach and comment, the judges will meet to modify, if necessary, and finally adopt the procedures set forth herein. Contemporaneously with activities leading to final adoption of the procedures herein, the Local Rules Committee will meet to propose conformance of these tentative, and ultimately final, procedures with the local rules of this district. Any change to the local rules will be performed in accordance with ordinary practice.

**2.0 Attorney Registration for Electronic Filing.** All attorneys who wish to file documents in the Eastern District of California must be admitted to practice or admitted

to appear pro hac vice. They must also complete an e-filing registration which will permit electronic filing of documents and authorize acceptance of service by electronic means. To do this an attorney must have a valid internet e-mail address. After registration, attorneys will receive a unique user name and password. Registration enables an attorney to file documents on the court website. The court registration name and password when utilized for the electronic filing of documents with the court will serve as the party's signature for F.R.C.P. Rule 11 purposes. See also Signature Section. In conjunction with the court filing registration requirement, registration for PACER, see section 2.2 below, is also mandated in order to permit an attorney or litigant to access images of documents maintained within court electronic records.

**2.1 Consent to Service.** Registration as a filing user constitutes: (1) consent to receive service electronically and waiver of the right to receive service by first class mail pursuant to Federal Rule of Civil Procedure 5(b)(2)(D) and Federal Rule of Criminal Procedure 49; (2) consent to making electronic service and waiver of the right to make service by personal service or first class mail pursuant to Federal Rule of Civil Procedure 5(b)(2)(D). This consent pertinent to Rule 5 does **not** affect service of a summons and complaint pursuant to Federal Rule of Civil Procedure 4. Waiver of service and notice by first class mail applies to notice of the entry of an order or judgment. Service by electronic means is complete upon transmission of the Notice of Electronic Filing.

**2.2 PACER Registration Required.** Documents already on the Court's servers are accessed by users and the public through the Public Access to Court Electronic Records ("PACER") Service Center. In order to utilize CM/ECF to review documents, a PACER login is required, *in addition to*, the password issued by the court for filing purposes. To register for PACER, a user must complete the online form or submit a registration form, available on the PACER web site (<http://pacer.psc.uscourts.gov>). Again, the PACER user name and password is distinct from that given by the court.

**2.3 Credit Card Payment.** All fees related to electronically filed documents, e.g., complaint, will be paid for by use of credit card on the court's secure servers.

## **C. PROVISIONS GOVERNING ALL CASES**

**1.0 Filing In General.** All initially filed documents, motions, pleadings, applications, briefs, memoranda of law, exhibits, deposition transcripts, transcripts of proceedings, or other documents in a case shall be electronically filed via ECF except as otherwise provided by these procedures.

**2.0 Exceptions to Electronic Filing. Attorney Exceptions.** In exceptional



circumstances and for specific documents, an attorney may apply to the assigned judge for permission to file documents in paper format. The decision to permit paper filing is in the sole discretion of the assigned judge. Any request to file paper documents must be made no less than five days prior to the date a document would otherwise be due to be filed. Permission to file paper may be revoked at any time by the assigned judge. As discussed previously, however, paper filings will be scanned by Clerk's Office personnel, and the electronic format will become the official court record. The paper filing will ultimately be discarded. See 3.0 below.

**Pro Se Parties.** Any person appearing pro se may **not** utilize electronic filing except with the permission of the assigned judge. Pro se litigants, whether or not their litigation is assigned as a pro se case ("PS"), shall file and serve paper documents as required by applicable rules of civil or criminal procedure, or the local rules of this district.

**2.5 Initial Case Filing Procedures. Attorneys–Fee Paid.** Initial case filings by attorneys in civil actions (includes prisoner and habeas corpus cases) shall be performed electronically. Generally,

1. The attorney will log into CM/ECF and submit credit card information and all initiating civil case documents in .pdf format. This will create a temporary file with the case type of "AT."
2. The clerk will monitor the Daily Activity Report for new "AT" cases and will process the credit card payment prior to opening the permanent civil case with the "CV" case number.
3. The clerk will copy the temporary case into a new civil case. The attorney will be noticed that the case has been filed and will receive the new case number and the standard case opening documents electronically. Summonses will be issued automatically and returned electronically.

However, once the proper administrative procedures have been performed, the docket shall reflect that the case was filed as of the date the attorney made electronic input so long as filing fee payment was tendered with the input. For complaints accompanied by motions requesting immediate injunctive relief, the Clerk's Office shall assign judges immediately and ensure that the initial filings are communicated to the appropriate assigned judge's mailbox forthwith.

Removal cases shall be filed using the general procedure set forth above. Again, the docket shall reflect that removal occurred at the time of electronic input and tender of payment.

**2.75 Initial Case Filing Procedures. Attorneys–In Forma Pauperis.**

1. The attorney will log into CM/ECF and submit an IFP Application and all initiating civil case documents in .pdf format. This will create a temporary

file with the case type of “FP.”

2. The clerk will monitor the Daily Activity Report for new “FP” cases and will process the IFP application prior to opening the permanent civil case with the “CV” case number.
3. If the IFP application is granted, the clerk will open the new civil file and will docket the initiating documents. The attorney will be noticed via a Notice of Electronic Filing (NEF) that the case has been filed and will receive the new case number and the standard case opening packet electronically. Any summonses requested will be issued and returned electronically.

However, once the proper administrative procedures have been performed, the docket shall reflect that the case was filed as a miscellaneous case as of the date the attorney made electronic input and sought to proceed in forma pauperis. For complaints accompanied by motions requesting immediate injunctive relief, the Clerk’s Office shall assign judges immediately and ensure that the initial filings are communicated to the appropriate assigned judge’s mailbox forthwith.

Death Penalty habeas corpus initial filings shall be communicated to the assigned judges immediately.

**3.0 Official Case Record.** Except as provided by these procedures, the official court record in all cases filed after January 3, 2005 will be the electronic case file. For cases commenced prior to January 3, 2005, all documents filed up to January 3, 2005 will be maintained in paper format; all documents filed after January 3, 2005 will be maintained in electronic format. The official court record in these cases would be paper to January 3, 2005 and electronic thereafter. However, in any case commenced after January 3, 2005, where permitted by these procedures, the official record shall include any paper documents.

**4.0 Filing Complete.** E-mailing a document to the Clerk’s Office or to the assigned judge shall not complete “filing” of the document. Except as noted above for the filing of initial documents, a document filed electronically shall not be considered filed for purposes of the Federal Rules of Civil Procedure until the filing party receives a system-generated “Notice of Electronic Filing.” See 6.0 below.

Paper filings, when permitted or required by these procedures, shall be complete upon presentation to the Clerk’s Office.

**5.0 Time of Filing.** A document will generally be deemed timely filed if filed prior to midnight on any business day. However, if in filing a document the time of day at which the document is filed is of the essence, the assigned judge may order that document be

filed by a time certain.

**6.0 Electronic Service.** CM/ECF supports automatic email service that provides potential savings in labor, copying and postage costs to both the court and the bar. “Notice of Electronic Filing” is a notice automatically generated by CM/ECF at the time a document is filed with the system, and in cases where counsel have appeared, will constitute automatic service of the document. This Notice will set forth the time of filing, the name of the parties and attorney(s) filing the document, the type of document, the text of the docket entry, the name of the parties and/or attorney(s) receiving the notice, and an electronic link (hyperlink) to the filed document which allows recipients to retrieve the document automatically. Service via electronic noticing constitutes service pursuant to F. R. Cv. P. 5(b)(2)(D) and F. R. Cr. P. 49. If parties are not registered for the CM/ECF system, e.g., prisoners or pro se litigants, the notice will state that those parties were not electronically served. It is the duty of counsel to serve these parties in accordance with the appropriate federal rules of procedure.

**7.0 Document Preferences.** As set forth previously, attorneys will file documents in court by directly accessing the court filing website. Except as set forth in these procedures, direct electronic filing is required. In connection with direct filing, however, there are several methods of submitting an electronic document to the court. Based upon the size, search-ability and the E-Government Act of 2002, the court’s preference (and probably users as well) for document submission is:

1. Direct electronic filing, via the internet, of the PDF document created from a word processing file.
2. Electronic filing, by delivery to the court, of the PDF document saved on floppy disk, CDROM, or other portable digital media readable by the court and created from a word processing file.
3. Direct electronic filing, via the internet, of the PDF document that had been created from paper by a scanning process.
4. Electronic filing, by delivery to the court, of the PDF document that was saved on floppy disk, CDROM, or other portable digital media readable by the court and after being converted from paper by a scanning process.

When permitted by these procedures, submission of documents to the court may be by:

5. Floppy disc, CDROM or other portable digital media readable by the court where the document has been formatted as a PDF document;
6. Paper.

**8.0 Exhibits; Size Guidelines for Exhibits in Electronic Format.** Unless otherwise permitted, all exhibits must be submitted in electronic format. While there is no presumptive page limit on exhibits that may be submitted to the court in electronic format, *scanned* attachments and exhibits larger than 50 pages may be filed electronically in separate 50 page segments. If a word processing document that has

been converted to .pdf is submitted as exhibit (as opposed to scanned), it should be divided into 100 page attachment files.

**8.1 Scanning Exhibits.** When a party scans exhibits for filing with the court, (remember, scanning will create a “larger” electronic document which requires more time to transmit and takes up more storage), the majority of exhibits (black and white documents) should be scanned in black and white with a scanner configured at 200 dots per inch (dpi). Documents appearing in color in their original form, such as color photographs, may be scanned in color and then uploaded to the System. The filing party is required to verify the readability of scanned documents before filing them electronically with the court. Originals of documents requiring scanning to be filed electronically must be retained by the filing party and made available, upon request, to the Court and other parties, for a period of one year following the expiration of the action or appeal therein.

**8.2 Conventional (Paper) Submission.** If a party, for exceptional circumstances, believes submission of exhibits should be in paper format, the party must apply to the assigned judge for an exemption to the requirement for electronic submission. Any such application must be filed in the judge’s chambers no less than five court days prior to the date the filing is due. When exhibits are submitted in paper format, the party shall electronically file, a one page .pdf document entitled Notice of Attachment referencing the electronically filed pleading, motion etc. pertinent to the Notice that states exhibits are being submitted in paper format. This will enable the docket to reflect that documents are being held in the Clerk’s Office in paper format.

**9.0 Chambers Courtesy Paper Copies.** A party who electronically files any document (excluding attachments or exhibits) in excess of 25 pages must also provide a courtesy paper copy to the appropriate chambers. A party who electronically files attachments or exhibits which total in excess of 50 pages must also provide a paper courtesy copy to chambers.

*All courtesy copies shall be labeled as such in capital letters on the face sheet of the courtesy copy.*

**10.0 Filed Paper Documents.** As indicated throughout these procedures, initial filings, certain types of cases or the status of certain litigants will require the filing of paper documents. Except as provided by these procedures, the Clerk’s Office will discard all original documents brought to the Clerk’s Office for filing after they are scanned and uploaded to the System. A litigant who wishes to have an original document returned after the Clerk’s Office scans and uploads it to the System may, prior to submitting the document to the Clerk’s Office, seek authorization from the assigned judge for the document’s return. Authorization will be granted at the discretion of the assigned judge. No blanket requests for authorizations for the return of all

original documents filed by a litigant or attorney will be accepted.

**11.0 Documents Requiring Leave of Court.** If filing a document requires leave of court, such as an amended complaint when an answer is on file, the attorney shall attach the document proposed to be filed as an exhibit to the motion/application, and a proposed order compatible with the Order Processing Procedures (see below). If the court grants the motion, the order will direct the attorney to file the document electronically with the court.

**12.0 Proposed Orders.** In any circumstance where a proposed order is submitted to the court, the party proposing the order must separately, electronically submit it via CM/ECF thereby effecting service on all other parties. Electronically submitted proposed orders may not be combined into a motion or request. In addition to electronically filing the proposed order, the proposing party must e-mail the proposed order to the assigned judge's order e-mail box in WordPerfect 10 compatible format.

**13.0 Order Processing.** Orders will be generated by chambers and converted to .pdf, or generated in .pdf format by forms in CM/ECF. The assigned judge or designee will electronically file all signed orders. Any order signed electronically has the same force and effect as if the judge had affixed the judge's signature to a paper copy of the order and had it been entered on the docket conventionally.

**13.1 Saving Orders in .pdf.** It will be the responsibility of each chambers to generate orders, affix an electronic signature and save the document in .pdf format.

**13.2 Entering Orders in CM/ECF.** Orders may be entered by chambers directly in CM/ECF. This may be done by the Judge, Magistrate Judge, Law Clerk, Judicial Assistant, Staff Attorney or Courtroom Deputy. If chambers personnel do not feel comfortable entering orders in CM/ECF, they may save the document with signature in .pdf format and e-mail the order to their docket clerk, return receipt requested, for processing.

**13.3 Service of Orders.** The person who enters the order into CM/ECF is responsible for ensuring that every party receives a copy of the order for service. In cases that are fully electronic, this service will be automatically generated by the system. In cases where only some of the parties are represented by counsel, electronic service will be generated for counsel, but non-represented parties must be manually served, i.e., an order will be printed and mailed. Cases in which none of the parties have attorney representation will require fully manual service.

**13.4 Text Only Orders.** The assigned judge, or deputy clerk, if appropriate, may grant routine orders by a text-only entry upon the docket. In such cases, no

.pdf document will issue; the text-only entry shall constitute the court's only order on the matter. The System will generate a "Notice of Electronic Filing" as described in these procedures for purposes of service.

#### **14.0 Sealed Documents in General.**

**14.1 Document Filed Under Seal.** In cases subject to electronic filing, a party may file electronically a motion to file a document under seal. A proposed order must be filed electronically along with the motion, unless the party believes both a public and nonpublic order should issue, in which case the party may present the nonpublic version of the order in paper format to the Clerk.

If a party believes all or part of a motion to file a document under seal should not be made available to the public in an electronic filing, the party may present the nonpublic portion of the motion in paper format to the Clerk, who will give it to the appropriate judge for *in camera* consideration of the sealing request. A nonpublic version of the proposed order must be presented in paper format to the Clerk along with the nonpublic portion of the motion to seal.

If a motion to file a document under seal is granted, the Judge or Magistrate Judge will enter electronically an order authorizing the filing of the document in paper format under seal.

**14.2 Document Filed Ex Parte Under Seal.** A motion to file a document ex parte under seal shall be clearly designated ex parte and presented to the Clerk in paper format along with a proposed order. If the motion is granted, the Judge or Magistrate Judge will enter electronically an order authorizing the filing of the document in paper format under seal.

**15.0 Signatures in General.** In general, all users of CM/ECF who have access to the system will have a login and a password. This login, password and a signature consisting of a "/s/ - First Name- Last Name" will constitute the "signature" of the user for purpose of CM/ECF.

**15.1 Attorney's Signatures.** Anything filed using an attorney's name, login and password will be deemed to have been signed by that attorney for all purposes, including Fed. R. Civ. P. 11. Attorneys should, but are not required to, place an electronic signature on pleadings and papers. For the attorney whose login and password is being used, it is sufficient to indicate a signature as in the following example: "/s/ John M. Barrister, Esquire." Any party challenging the authenticity of an electronically filed document or the attorney's signature on that document must file an objection to the document within ten (10) days of receiving the Notice of Electronic Filing.

**15.2 Documents Requiring Signatures of Multiple Attorneys.** Pleadings and papers which are normally signed by more than one attorney, regardless of whether the attorneys represent the same party or different parties may be

handled by obtaining approval from any other attorney to state that the other attorney has authorized him or her to sign the document on their behalf. The signing attorney shall obtain and maintain in his or her records a paper copy of the document signed by the other attorney, and shall also annotate the other attorney's signature on the electronic filing as described above. A second option is to obtain the original signatures from all attorneys who are filing the document, scan the signature page only and file it as an attachment to the document describing this procedure on the signature page of the filed document.

In any case where an attorney becomes aware that, by these procedures, he or she has consented to his or her signature being placed on a document or that he or she has signed a document, when in fact he or she has not signed or consented, it is the responsibility of that attorney to immediately notify the court and request that the document be stricken, but in no event, more than 10 days after the filing.

**15.3 Non-Attorney's Signature** - Documents which are required to be signed by persons who are not counsel of record in a particular case (verified pleadings, affidavits, etc.), may be submitted in electronic format bearing a "/s/" on the signature line along with a statement by counsel that he or she has a signed copy, e.g., "/s/ John Doe (original signature retained by attorney)." It is counsel's duty to maintain this signed copy. A non-filing signatory, party or attorney who disputes the authenticity of an electronically filed document with a non-attorney signature must file an objection to the document within ten (10) days of receiving the Notice of Electronic Filing. The foregoing procedure may also be followed in cases where a hybrid electronic/manual procedure is in place, i.e., the manually served document may also contain an annotated signature in lieu of the original.

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**15.4 Signatures on Documents in Criminal Cases.** Several documents in criminal cases require the signature of a non-attorney, such as a grand jury foreperson, a defendant, a third-party custodian, a United States Marshal, an officer from Pretrial Services or Probation, or some other federal officer or agent. In general, the Clerk's Office will scan these documents, upload them to the System, and except as otherwise provided by administrative procedures, discard them. The electronically filed document as it is maintained on the court's servers shall constitute the official version of that record.

**16.0 Privacy Concerns in General.** Pursuant to the Judicial Conference Policy on Privacy and Electronic Access to Case Files, and the E-Government Act of 2002, Pub. L. No. 107-347, effective April 16, 2003, filing parties (court and attorney) shall omit or, where reference is necessary, partially redact the following personal data identifiers from all civil pleadings, documents, and exhibits, whether filed electronically or on paper, unless the assigned judge orders otherwise:

- a. Minors' names: Use the minors' initials;

- b. Financial account numbers: Identify the name or type of account and the financial institution where maintained, but use only the last four numbers of the account number;
- c. Social Security numbers: Use only the last four numbers;
- d. Dates of birth: Use only the year; and

*No other redactions are permitted unless the assigned judge has authorized the redaction.* It is the attorney's/litigant's responsibility to be cognizant of federal privacy law, and where appropriate, state privacy law. Moreover, an attorney/litigant should recognize proprietary or trade secret information which is protected from dissemination by law. Where an attorney/litigant seeks to submit protected information, a protective order should be sought.

Neither the Clerk's Office nor chambers will review attorney/pro se filed documents for compliance with privacy or other protective law, seal on its own motion documents containing personal data identifiers, or redact documents, whether filed electronically or on paper.

No procedure set forth herein will excuse a violation of privacy or other law.

**16.1 Submission of Unredacted Documents.** Pursuant to the terms of a protective order, or other law, an attorney or litigant ("party") may seek to submit an unredacted document containing protected information for review by the court. In such an event, the party is required to file electronically a motion or application to file the document under seal pursuant to the E-Government Act of 2002. (See Sealed Document Requirements). If the assigned judge grants the motion or application, the filing party shall then submit the unredacted paper document to the Clerk's Office for distribution and review by the appropriate judge. The paper document must have a cover page or notation on the first page stating the following: "Document filed under seal pursuant to the E-Government Act."— The court will retain this paper document under seal in the court's vault and will return the document to the party when the proceeding has ended.

**17.0 Appeals in General.** A Notice of Appeal should be filed electronically. It is not necessary to provide the court with paper copies of the notice for service on the other parties. The electronic notice generated by the system will constitute the copy the clerk is required to serve under Fed. R. App. P. 3(d). If the Notice of Appeal is electronically filed through CM/ECF, the required filing fee must be paid for by credit card. Again, manual service will be made upon, and by, pro se parties.

**18.0 Trial Exhibits.** Exhibits admitted at trial are normally not retained by the district court. However, if exhibits are necessary for use on appeal, the attorneys are responsible for submitting a complete electronic copy of their respective exhibits that



were admitted in whatever format at trial to the Clerk's Office within ten days of the filing of a Notice of Appeal. In the case of a pro se litigant proceeding in forma pauperis, the Clerk's Office will be responsible for scanning the exhibits to create the electronic record.

**19.0 Technical Failures.** The Clerk's Office shall deem the District ECF site to be subject to a technical failure on a given day if the site is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 10:00 a.m. on a given day. Known systems outages will be posted on the web site, if possible.

A filing party whose filing is made untimely as the result of a technical failure of the court's ECF site must seek appropriate relief from the court. Except in extraordinary circumstances, or where the court has previously determined not to excuse untimely filings due to technical failures, or has mandated a paper filing due to the technical failure, the court will excuse untimely filings caused by the District ECF failure.

Problems on the filer's end, such as phone line problems, problems with the filer's Internet Service Provider (ISP), or hardware or software problems, will not constitute a technical failure under these procedures nor excuse an untimely filing. A filer subject to mandatory electronic filing who cannot file a document electronically because of a technical problem on the filer's end must file the document conventionally at the Clerk's Office (or use the Drop Box for filings in Sacramento only). The party shall annotate on the cover page that electronic filing was not possible because of technical reasons.

## **D. CIVIL PROCEEDINGS**

**1.0 Civil Cases In General.** Civil Proceedings are defined as all proceedings initiated by parties where all plaintiffs and all defendants are represented by counsel (non-pro se) and the case is not brought by a person in custody who is seeking habeas corpus relief (28 U.S.C. §§ 2241 et seq.), or any relief authorized by 42 U.S.C. § 1981 et seq. (prisoner case) (CIV P) or an action brought under 42 U.S.C. §§ 405(g), 1383(c)(3) and 1395ff to review a final decision of the Secretary of Health and Human Services (social security appeal). Pro se cases, see Local rule 72-302\_\_ are annotated with a "CIV PS" denomination.

Civil proceedings will be governed by the preceding provisions applicable to all cases.

## **E. CRIMINAL PROCEEDINGS**

**1.0 Criminal Cases in General.** Criminal Proceedings are defined as all felony and class-A misdemeanor actions that are opened as "CR" cases by the district court. In general, all documents submitted for filing in this district in a criminal proceeding commenced on or after January 3, 2005, shall be filed electronically in .pdf (Portable Document Format) using the Electronic Case File System ("ECF") or shall be submitted for filing to the Clerk's Office on 3.5" disks or CD-ROM as .pdf files.

As set forth in the General Provisions, pro se defendants will not be authorized to electronically file, but must submit and serve paper filings in accord with applicable rules.

**2.0 Magistrate Judge Cases in General.** Magistrate Judge Cases are defined as all complaints, initial Rule 40 appearances or class B and C misdemeanors also known as "Petty Offense Cases," and all other actions where a "MAG" case is opened. In general, except for pro se defendants, all documents submitted for filing after January 3, 2005 shall be submitted in electronic format.

**3.0 Mandatory Exceptions in Criminal Cases.** Due to their unique nature, the following documents shall be filed in paper format and scanned into Electronic format by the district court:

1. Indictments / Informations
2. Arrest Warrants issued by a Judge or Magistrate Judge;
3. Search Warrants;
4. Seizure Warrants;
5. Pen Register authorizations and like documents;
6. Criminal Complaints;
7. Affidavits;
8. Rule 40 / 20 documents;
9. Writs ad testificandum and prosequendum.

**4.0 Juvenile Cases.** Juvenile criminal matters shall not be filed electronically unless, after hearing, the assigned judge rules that the juvenile shall be tried as an adult.

**5.0 Privacy Concerns / Access.** As originally contemplated, only registered attorneys of record would have remote access to documents in criminal cases, no public remote access would be available unless the court authorizes. However, we have recently been made aware that the Judicial Conference of the United States has now approved electronic access to criminal cases in the same manner in which it is permitted in civil cases. Although the Judicial Conference approval is not scheduled to be effective until the Fall of 2004, it will be in effect when the Eastern District institutes CM/ECF. Therefore, electronic access to criminal files under PACER will mirror that

permitted in civil cases.

## **F. SOCIAL SECURITY PROCEEDINGS**

**1.0 Social Security Cases In General.** Except for the initial filing, absent a showing of good cause, all documents, notices, and orders in social security reviews filed in the District Court after the ECF is implemented shall be filed and noticed electronically if plaintiff is represented by counsel. If plaintiff is not represented by counsel and is instead appearing pro se, they should refer to the requirements governing pro se filers described in the procedures for all cases above.

**2.0 Privacy Issues in Social Security Cases.** To address the privacy issues inherent in a social security review, Internet access to the individual documents will be limited to counsel and court staff. Docket sheets, however, will be available over the Internet to non-parties. Further, pro se litigants and non-parties will continue to have direct access to the documents on file at the Clerk's Office

**3.0 Administrative Transcripts in Social Security Cases.** Due to the size of administrative records, the court will request social security records from the United States in electronic format with a courtesy copy to judge chambers in paper. If the Commissioner is unable to comply, the Clerk's Office will accept only an original paper copy lodged with the court and an ECF entry of Noticing of Lodging in Paper Format by the attorney. This transcript will be maintained in the file room in paper format. The transcript will be returned to the United States or destroyed after the action and all time for appeal has run.

## **G. PRISONER CASE PROCEEDINGS**

**1.0 Prisoner Cases In General.** A Prisoner Case is an action defined by the Local Rules as an action brought by a person in custody who is seeking habeas corpus relief (28 U.S.C. §§ 2241 et seq.), or any relief authorized by 42 U.S.C. § 1981 et seq. If the prisoner is represented by counsel, this section shall not apply. Parties represented by counsel in prisoner cases shall file documents electronically as defined above. However, counsel must serve a pro se prisoner by mail or other appropriate service. Pro se parties in prisoner cases must file and serve paper documents ("conventional filing").

**2.0 Conventional Filing of Documents Defined.** Conventional filing of documents means filing a paper copy with the office of the clerk. Documents filed conventionally with the office of the clerk may be filed via mail, in person, or by placing a copy of the document in the court's drop box (for Sacramento cases only). The conventional filing of documents is governed by the court's local rules. If a party requires a document to be conformed and returned to them, they must submit one additional legible conformed

copy, and if mailed, a postage paid returned envelope. If a postage paid envelope is not received, documents cannot be returned to the filer.

**3.0 All Conventionally Filed Documents Will be Scanned.** Prisoner pro se filers shall file paper originals of all complaints, pleadings, motions, affidavits, briefs, and other documents which must be signed or which require either verification or a sworn declaration under any rule or statute. The Clerk's Office will scan these original documents into an electronic file in the ECF and after 30 days, discard the original document, or at a judge's request, route the original document to judge's chambers for review and destruction. The scanned copy of the document will be the original document for all purposes and the electronic case file will be the official court record.

**4.0 Service in Prisoner Cases.** It is the duty of the prisoner pro se filer to effectuate conventional service of documents upon parties pursuant to the Federal Rules of Civil and Criminal Procedure.

**5.0 State Court Habeas Transcripts.** Due to the size of state court records, the assigned judge will request habeas corpus transcripts from the Attorney General in electronic format with a courtesy copy to the assigned judge's chambers in paper. If the Attorney General is unable to provide an electronic copy, the clerk's office will accept an original paper copy lodged with the court and an ECF entry of Noticing of Lodging in Paper Format by the designated attorney. This transcript will be maintained in the file room in paper format. The transcript will be returned to the Attorney General or destroyed after the action and all time for appeal has run.

## **H. PRO SE CASE PROCEEDINGS**

**1.0 Pro Se Cases in General.** A Pro Se Case is defined as an action in which all the plaintiffs or defendants are proceeding in propria persona, also referred to as pro se. In these actions the pro se parties only are excused from the requirement of filing documents electronically with the court. Pro se parties only may file documents conventionally. Parties represented by counsel are referred to the Provisions Governing All Cases.

**2.0 Service in Pro Se Cases.** It is the duty of the pro se filer to effectuate conventional service of documents upon parties pursuant to the Federal Rules of Civil and Criminal Procedure. The scanning of documents and subsequent notice to attorneys of the filing of a document does not constitute service for documents filed in paper format pursuant to Rule 5 of the Fed.R.Civ.P.

As set forth in the Provisions Governing All Cases, even though attorneys will be filing electronically in pro se cases, service upon the pro se litigant must be by mail or personal service.

## **I. MISCELLANEOUS PROCEEDINGS**

**1.0 Miscellaneous Cases In General.** All documents submitted for filing in this district in a miscellaneous proceeding after January 3, 2005, no matter when the action was originally commenced, shall be filed in accordance with the provisions governing civil cases in general.

**2.0 Mandatory Exceptions.** Grand Jury proceedings should be proffered for filing by the United States Attorney in paper format. These documents will be scanned into .pdf format by the Clerk's Office.

## **Glossary of Terms**

**Attorney's Signature.** Signature on electronically filed document, a combination of the attorneys login, password and a representative signature "/s/ - Attorney Name" on the signature line of the document.

**Civil Case.** All civil actions that are not prisoner, pro se or social security.

**CM/ECF.** The Case Management / Electronic Case Files docketing and file system to be implemented by all district courts, and the Eastern District on January 3, 2005.

**Consent to Service.** Authorization by a party to accept service by electronic means pursuant to F.R.C.P. 5 (b)(2)(D).

**Conventional Service.** Service accomplished by traditional means (either personal or mailing) pursuant to F.R.C.P. 5(b)(2)(A) - (C).

**Conventional Filing.** Filing of a document with the Clerk of Court in paper format.

**Courtesy Paper Copy.** A document submitted in paper format directly to chambers when a filing exceeds 25 pages or an exhibit or attachment exceeds 50 pages. Must be labeled COURTESY COPY.

**Criminal Case.** All cases given a "cr" in the CM/ECF system. Generally, all felony, misdemeanor and transfer of jurisdiction of probationer actions.

**Direct Electronic Filing.** Filing of a document in electronic format via the internet through the ECF system.

**ECF System.** Electronic Case File System used by the court. Also referred to as CM/ECF. Allows for the filing and service of documents in .pdf format.

**E-Filing Registration.** Registering with the court to file documents electronically through ECF. Also acts as a consent to service by Electronic means. This is distinct from PACER registration.

**Electronic Case Files.** Official record of the case file kept by the court in electronic format.

**Electronic Filing.** Filing documents in .pdf format through the courts ECF system or proffered to the clerk in electronic format on cd-rom or floppy disk.

**Electronic Noticing.** Using the court's ECF system for service and notice to parties of filing a document pursuant to F.R.C.P. 5(b)(2)(D).

**Electronic Signature.** Signature on electronically filed document, a combination of the person's login, password and representative signature, "/s/ - Name" on the signature line of the document.

**ISP.** Internet Service Provider. The provider of internet services for an attorney / filer.

**Judge's Signature.** Signature on electronically filed document, a combination of the judge's login, password, and a representative "/s/ - Name" on the signature line of the document.

**Judges Order Mail Box.** A separate e-mail address established by the court for the submission of proposed orders to a judge in WordPerfect format.

**Magistrate Judge Cases.** A case denoted as "mg" in the court's CM/ECF system. Usually a criminal complaint, petty offense or Rule 40 action.

**Miscellaneous Case.** A case denoted as "mc" in the court's CM/ECF system. A miscellaneous number is assigned to ancillary and supplementary proceedings not defined as civil actions.

**Non-Attorney's Signature.** A signature on electronically filed document by other than an attorney. Example /s/ - John Doe (original signature retained by attorney).

**Notice of Electronic Filing.** Or NEF. A notice generated in ECF that notifies parties that a document has been filed. Contains a hyperlink to the document so recipient can have one "free" look, where they can save or print the filed document.

**PACER.** Public Access to Court Electronic Records. A system maintained by the Administrative Office for access to court electronic records. Registration to this system is required to access documents filed in ECF.

**PACER Registration.** A separate requirement for E-filing along with ECF registration. Allows users to view documents through the PACER (Public Access to Court Electronic Records) System.

**PDF.** Portable Document Format. The required format for documents filed through the ECF system. Documents may be converted to .pdf format through PDF software.

**PDF Software.** Software needed to convert word processor or scanned documents to .pdf format.

**Prisoner Cases.** Cases brought by a person in custody who is seeking habeas corpus relief (28 U.S.C. §§ 2241 et seq.), or any relief authorized by 42 U.S.C. § 1981 et seq.

**Privacy Policy.** The Policy of the Judicial Conference of the United States on Privacy and Electronic Access to Case Files and the E-Government Act of 2002, Pub. L. No. 107-347, requiring parties (court and attorney) to omit or redact personal data identifiers from filings.

**Pro Se Case.** In Sacramento, all cases in which all the plaintiffs or defendants are proceeding in propria persona.

**Scanned Document.** A document scanned into electronic format from paper format and saved to .pdf format.

**Social Security Case.** Cases brought under 42 U.S.C. §§ 405(g), 1383(c)(3) and 1395ff to review a final decision of the Commissioner of Social Security.

**Text Only Order.** An order issued by the court without an attached electronic document. The order appears as a docket entry with the words Text Entry Only.

**Word Processing Converted Document.** A document created with a word processor such as Word or WordPerfect and saved to .pdf format.